



DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of seven petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit your comments including the docket number of the petition by any of the following methods:

1. Email: zzMSHA-comments@dol.gov. Include the docket number of the petition in the subject line of the message.
2. Facsimile: 202-693-9441.
3. Regular Mail or Hand Delivery: Regular Mail or Hand Delivery: MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452, Attention: S. Aromie Noe, Acting Director, Office of Standards, Regulations, and Variances. MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202-693-9455 to make an appointment in keeping with the Department of Labor's COVID-19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202-693-9440 (voice), Noe.Song-Ae.A@dol.gov (email), or 202-693-9441 (facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petitions for Modification

Docket Number: M-2021-035-C

Petitioner: Peabody Southeast Mining LLC, 701 Market Street, St. Louis, Missouri, 63101

Mine: Shoal Creek Mine, MSHA ID No. 01-02901, located in Tuscaloosa and Walker Counties, Alabama

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.500(d), as it relates to the use of low voltage, battery-powered non-permissible testing and diagnostic equipment in or inby the last open crosscut. Specifically, the petitioner requests to use

low voltage, battery-powered non-permissible testing and diagnostic equipment, including, but not limited to laptop computers; oscilloscopes; vibration analysis machines; cable fault detectors; point temperature probes; infrared temperature devices; insulation testers (meggers); voltage, current resistance, and power testers; and electronic tachometers, as well as other testing and diagnostic equipment if approved in advance by the MSHA District Manager.

The petitioner states that:

- (a) The petitioner utilizes the continuous mining machine and longwall method of mining.
- (b) Accurate testing and diagnostic tools for troubleshooting equipment problems in or inby the last open crosscut are critical to the safety of the miners at the Shoal Creek Mine.
- (c) Mining equipment sometimes breaks down in areas of a mine where permissible equipment is required and the equipment cannot be moved into intake air to perform diagnosis or repairs as it may not be possible to move the equipment, or it is unsafe to move it.
- (d) Permissible diagnostic and testing equipment is not available for all types of testing and diagnostics. While certain types of equipment, such as vibration analysis machines, point temperature and infrared temperature devices, and voltage current and resistance meters are currently on the list of MSHA-approved permissible products, the petitioner includes such devices in the event approved devices may not be readily available on the market.

The petitioner proposes the following alternative method:

- (a) Non-permissible electronic testing and diagnostic equipment to be used includes laptop computers; oscilloscopes; vibration analysis machines; cable fault detectors; point temperature probes; infrared temperature devices; insulation testers (meggers); voltage testers, current resistance testers, and power testers; and electronic tachometers. Other testing and diagnostic equipment may be used if approved in advance by the MSHA District Manager.

- (b) All non-permissible testing and diagnostic equipment used in or inby the last open crosscut will be examined by a qualified person as defined in 30 CFR 75.153 prior to use to ensure the equipment is being maintained in a safe operating condition. The examination results will be recorded in the weekly examination book and will be made available to MSHA and the miners at the mine.
- (c) A qualified person as defined in 30 CFR part 75.151 will continuously monitor for methane immediately before and during the use of non-permissible electronic testing and diagnostic equipment in or inby the last open crosscut.
- (d) Non-permissible electronic testing and diagnostic equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while the non-permissible electronic equipment is being used, the equipment will be de-energized immediately and withdrawn outby the last open crosscut.
- (e) All hand-held methane detectors will be MSHA-approved and will be maintained in permissible and proper operating condition as defined in 30 CFR 75.320.
- (f) Coal production in the section will cease except for time necessary to troubleshoot under actual mining conditions. However, coal may remain in or on the equipment to test and diagnose the equipment under "load."
- (g) All electronic testing and diagnostic equipment will be used in accordance with the safe use procedures recommended by the manufacturer.
- (h) Qualified personnel who use electronic testing and diagnostic equipment will be properly trained to recognize the hazards and limitations associated with use of the equipment.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Docket Number: M-2021-036-C

Petitioner: Peabody Southeast Mining LLC, 701 Market Street, St. Louis, Missouri, 63101

Mine: Shoal Creek Mine, MSHA ID No. 01-02901, located in Tuscaloosa and Walker Counties, Alabama

Regulation Affected: 30 CFR 75.507-1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.507-1(a), as it relates to the use of low voltage, battery-powered nonpermissible testing and diagnostic equipment in return air. Specifically, the petitioner requests to use low voltage, battery-powered non-permissible testing and diagnostic equipment, including, but not limited to laptop computers; oscilloscopes; vibration analysis machines; cable fault detectors; point temperature probes; infrared temperature devices; insulation testers (meggers); voltage, current resistance, and power testers; and electronic tachometers, as well as other testing and diagnostic equipment if approved in advance by the MSHA District Manager.

The petitioner states that:

- (a) The petitioner utilizes the continuous mining machine and longwall method of mining.
- (b) Accurate testing and diagnostic tools for troubleshooting equipment problems in return air are critical to the safety of the miners at the Shoal Creek Mine.
- (c) On occasion mining equipment breaks down in areas of a mine where permissible equipment is required and the equipment cannot be moved into intake air to perform diagnosis or repairs as it may not be possible to move the equipment, or it is unsafe to move it.
- (d) Permissible diagnostic and testing equipment is not available for all types of testing and diagnostics. While certain types of equipment, such as vibration analysis machines, point temperature and infrared temperature devices, and voltage current and resistance meters are currently on the list of MSHA-approved permissible products, the petitioner includes such devices in the event approved devices may not be readily available on the market.

The petitioner proposes the following alternative method:

- (a) Non-permissible electronic testing and diagnostic equipment to be used includes laptop computers; oscilloscopes; vibration analysis machines; cable fault detectors; point temperature probes; infrared temperature devices; insulation testers (meggers); voltage testers, current resistance testers, and power testers; and electronic tachometers. Other testing and diagnostic equipment may be used if approved in advance by the MSHA District Manager.
- (b) All non-permissible testing and diagnostic equipment used in return air outby the last open crosscut will be examined by a qualified person as defined in 30 CFR 75.153 prior to use to ensure the equipment is being maintained in a safe operating condition. The examination results will be recorded in the weekly examination book and will be made available to MSHA and the miners at the mine.
- (c) A qualified person as defined in 30 CFR part 75.151 will continuously monitor for methane immediately before and during the use of non-permissible electronic testing and diagnostic equipment in return air outby the last open crosscut.
- (d) Non-permissible electronic testing and diagnostic equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while the non-permissible electronic equipment is being used, the equipment will be de-energized immediately and the non-permissible equipment withdrawn from the return air outby the last open crosscut.
- (e) All hand-held methane detectors will be MSHA-approved and will be maintained in permissible and proper operating condition as defined in 30 CFR 75.320.
- (f) All electronic testing and diagnostic equipment will be used in accordance with the safe use procedures recommended by the manufacturer.
- (g) Qualified personnel who use electronic testing and diagnostic equipment will be properly trained to recognize the hazards and limitations associated with use of the equipment.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Docket Number: M-2021-037-C

Petitioner: Peabody Southeast Mining LLC, 701 Market Street, St. Louis, Missouri, 63101

Mine: Shoal Creek Mine, MSHA ID No. 01-02901, located in Tuscaloosa and Walker Counties, Alabama

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.1002(a) as it relates to the use of low voltage, battery-powered nonpermissible testing and diagnostic equipment on the longwall face or within 150 feet of pillar workings. Specifically, the petitioner requests to use low voltage, battery-powered non-permissible testing and diagnostic equipment, including, but not limited to laptop computers; oscilloscopes; vibration analysis machines; cable fault detectors; point temperature probes; infrared temperature devices; insulation testers (meggers); voltage, current resistance, and power testers; and electronic tachometers, as well as other testing and diagnostic equipment if approved in advance by the MSHA District Manager.

The petitioner states that:

- (a) The petitioner utilizes the continuous mining machine and longwall method of mining.
- (b) Accurate testing and diagnostic tools for troubleshooting equipment problems on the longwall face or within 150 feet of pillar workings are critical to the safety of the miners at the Shoal Creek Mine.
- (c) On occasion mining equipment breaks down in areas of a mine where permissible equipment is required and the equipment cannot be moved into intake air to perform

diagnosis or repairs as it may not be possible to move the equipment, or it is unsafe to move it. On a longwall face, the mining equipment cannot be moved to another location.

- (d) Permissible diagnostic and testing equipment is not available for all types of testing and diagnostics. While certain types of equipment, such as vibration analysis machines, point temperature and infrared temperature devices, and voltage current and resistance meters are currently on the list of MSHA-approved permissible products, the petitioner includes such devices in the event approved devices may not be readily available on the market.

The petitioner proposes the following alternative method:

- (a) Non-permissible electronic testing and diagnostic equipment to be used includes laptop computers; oscilloscopes; vibration analysis machines; cable fault detectors; point temperature probes; infrared temperature devices; insulation testers (meggers); voltage testers, current resistance testers, and power testers; and electronic tachometers. Other testing and diagnostic equipment may be used if approved in advance by the MSHA District Manager.
- (b) All non-permissible testing and diagnostic equipment used on the longwall face or within 150 feet of pillar workings will be examined by a qualified person as defined in 30 CFR 75.153 prior to use to ensure the equipment is being maintained in a safe operating condition. The examination results will be recorded in the weekly examination book and will be made available to MSHA and the miners at the mine.
- (c) A qualified person as defined in 30 CFR part 75.151 will continuously monitor for methane immediately before and during the use of non-permissible electronic testing and diagnostic equipment on the longwall face or within 150 feet of pillar workings.
- (d) Non-permissible electronic testing and diagnostic equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while the non-permissible electronic equipment is being used, the equipment

will be de-energized immediately and the non-permissible equipment withdrawn from the longwall face or moved more than 150 feet from pillar workings.

- (e) All hand-held methane detectors will be MSHA-approved and will be maintained in permissible and proper operating condition as defined in 30 CFR 75.320.
- (f) All electronic testing and diagnostic equipment will be used in accordance with the safe use procedures recommended by the manufacturer.
- (g) Qualified personnel who use electronic testing and diagnostic equipment will be properly trained to recognize the hazards and limitations associated with use of the equipment.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Docket Number: M-2021-038-C

Petitioner: Peabody Southeast Mining LLC, 701 Market Street, St. Louis, Missouri, 63101

Mine: Shoal Creek Mine, MSHA ID No. 01-02901, located in Tuscaloosa and Walker Counties, Alabama

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.500(d) as it pertains to use of battery-powered non-permissible surveying equipment in or inby the last open crosscut. Specifically, the petitioner requests to use battery-powered non-permissible equipment including, but not limited to, portable battery operated mine transits, total station surveying equipment, distance meters, and data loggers.

The petitioner states that:

- (a) The petitioner utilizes the continuous mining machine and longwall method of mining.
- (b) Accurate surveying is critical to the safety of the miners at the Shoal Creek Mine.
- (c) To comply with the requirements of 30 CFR 75.372 and 30 CFR 75.1200, it is necessary to use the most practical and accurate surveying equipment.

- (d) Mechanical surveying equipment has been obsolete for a number of years and such equipment of acceptable quality is not commercially available. It is difficult, if not impossible, to service or repair mechanical surveying equipment.
- (e) Electronic surveying equipment is, at a minimum, eight to ten times more accurate than mechanical equipment.
- (f) Underground mining by its nature, size, and mine plan complexity requires prompt and efficient completion of accurate and precise measurements.
- (g) Application of this standard would result in a diminution of safety to miners.

The petitioner proposes the following alternative method:

- (a) The operator may use the Leica TS06 total station and similar low voltage battery-operated total stations and theodolites, distance meters, and data loggers if they have an Ingress Protection (IP) rating of 55 or greater in or inby the last open crosscut subject to the conditions of this petition.
- (b) The operator shall replace or retire from service any electronic surveying instrument acquired prior to December 31, 2004, within 1 year of this petition becoming final. Within 3 years of that date, the operator shall replace or retire from service any theodolite acquired more than 5 years prior to the date this petition became final and any total station or other electronic surveying equipment acquired more than 10 years prior to the date this petition became final. After 5 years, the operator will maintain a cycle of purchasing new electronic surveying equipment whereby theodolites will be no older than 3 years from date of manufacture, and total stations and other electronic surveying equipment will be no older than 10 years from date of manufacture. All non-permissible electronic total stations and theodolites acquired under this retirement criteria shall have an IP rating of 66 or greater.
- (c) The operator is responsible for ensuring that all surveying contractors hired by the operator use electronic equipment in accordance with the requirements of this petition.

The conditions of use apply to all non-permissible electronic surveying equipment used in or inby the last open crosscut regardless of whether the equipment is used by the operator or by an independent contractor.

- (d) The operator will maintain an electric surveying equipment logbook with the equipment, where mine record books are kept, or where surveying record books are kept. The logbook will contain the date of manufacture and/or purchase of each piece of electronic surveying equipment. The logbook shall be made available to MSHA upon request.
- (e) All non-permissible electronic surveying equipment to be used in or inby the last open crosscut shall be examined by the person who will operate the equipment prior to taking the equipment underground to ensure the equipment is being maintained in a safe operating condition. These examinations shall include:
 - 1. Check the instrument for any physical damage and the integrity of the case;
 - 2. Remove the battery and inspect for corrosion;
 - 3. Inspect the contact points to ensure a secure connection to the battery;
 - 4. Reinsert the battery and power up and shut down to ensure proper connections;and
 - 5. Check the battery compartment cover or battery attachment to ensure it is securely fastened.
- (f) The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.153, and the examination results shall be recorded weekly in the equipment's logbook. Examination entries in the logbook will be maintained for at least 1 year.
- (g) The operator shall ensure that all non-permissible electronic surveying equipment is serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's logbook and shall include a description of the work performed.

- (h) Non-permissible surveying equipment used in or inby the last open crosscut shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of this petition
- (i) Non-permissible surveying equipment shall not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more of methane is detected while the non-permissible surveying equipment is being used, the equipment shall be de-energized immediately and the non-permissible electronic equipment withdrawn outby the last open crosscut. Prior to entering in or inby the last open crosscut, all requirements of 30 CFR 75.323 shall be complied with.
- (j) As an additional safety check, prior to setting up and energizing non-permissible electronic surveying equipment in or inby the last open crosscut, the surveyor(s) shall conduct a visual examination of the immediate area for evidence that the area appears to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or accumulated float coal dust is observed, the equipment may not be energized until sufficient rock dust has been applied and/or the accumulation of float coal dust has been cleaned-up. If non-permissible electronic surveying equipment is to be used in an area that is not rock dusted within 40 feet of a working face where a continuous mining machine is used to extract coal, the area shall have sufficient rock dust applied prior to energizing the electronic surveying equipment.
- (k) All hand-held methane detectors shall be MSHA-approved and will be maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors shall provide visual and audible warnings when methane is detected at or above 1.0 percent.
- (l) Prior to energizing any non-permissible surveying equipment in or inby the last open crosscut, methane tests shall be made in accordance with 30 CFR 75.323(a).

- (m) All areas to be surveyed shall be pre-shift examined according to 30 CFR 75.360 prior to surveying. If the area was not pre-shift examined, a supplemental examination according to 30 CFR 75.361 shall be performed before any non-certified person enters the area. If the area has been examined according to 30 CFR 75.360 or 30 CFR 75.361, additional examination is not required.
- (n) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of non-permissible surveying equipment in or inby the last open crosscut. A second person in the surveying crew, if there are two people in the crew, shall also continuously monitor for methane. That person shall either be a qualified person as defined in 30 CFR 75.151, or be in the process of being trained to be a qualified person but have yet to make such tests for a period of 6 months as required by 30 CFR 75.150. Upon completion of the 6-month training period, the second person on the surveying crew shall become qualified in order to continue on the surveying crew. If the surveying crew consists of only one person, the surveyor shall monitor for methane with two separate devices.
- (o) Personnel engaged in the use of surveying equipment shall be properly trained to recognize the hazards and limitations associated with the use of surveying equipment in areas where methane could be present.
- (p) Batteries contained in the surveying equipment shall be changed out or charged in intake air outby the last open crosscut. Replacement batteries for the surveying equipment shall be carried only in the compartment provided for a spare battery in the electronic equipment carrying case. Before each shift of surveying, all batteries for the surveying equipment shall be charged sufficiently so that they are not expected to be replaced on that shift.
- (q) When using non-permissible electronic surveying equipment in or inby the last open

crosscut, the surveyor shall confirm by measurement or by inquiry of the person in charge of the section that the air quantity on the section, on that shift, is at least the minimum quantity that is required by the mine's ventilation plan.

(r) Non-permissible surveying equipment may be used when production is occurring subject to these conditions:

1. On a mechanized mining unit (MMU) where production is occurring, non-permissible electronic surveying equipment shall not be used downwind of the discharge point of any face ventilation controls, such as tubing (including controls such as "baloney skins") or curtains.

2. Production may continue while non-permissible electronic surveying equipment is used if the surveying equipment is used in a separate split of air from where production is occurring.

3. Non-permissible surveying equipment shall not be used in a split of air ventilating an MMU if any ventilation controls will be disrupted during such surveying. Disruption of ventilation controls means any change to the mine's ventilation system that causes the ventilation system not to function in accordance with the mine's approved ventilation plan.

4. If, while surveying, a surveyor must disrupt ventilation, the surveyor shall cease surveying and communicate to the section foreman that ventilation must be disrupted. Production shall stop while ventilation is disrupted. Ventilation controls shall be reestablished immediately after the disruption is no longer necessary. Production can only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans and other applicable laws, standards, or regulations.

5. Any disruption in ventilation shall be recorded in the logbook required by this petition. The logbook shall include a description of the nature of the disruption, the location of the disruption, the date and time of the disruption, the date and time the surveyor communicated the disruption to the section foreman, the date and time production ceased, the date and time ventilation was reestablished, and the date and time production resumed.
- (s) All surveyors, section foremen, section crew members, and other personnel who will be involved with or affected by surveying operations shall receive training on the terms and conditions of this petition before using non-permissible electronic equipment in or inby the last open crosscut. A record of the training shall be kept with the other training records and provided to MSHA upon request.
- (t) Within 60 days after this petition becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in this petition. When training is conducted, an MSHA Certificate of Training (Form 5000- 23) shall be completed indicating surveyor training.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Docket Number: M-2021-039-C

Petitioner: Peabody Southeast Mining LLC, 701 Market Street, St. Louis, Missouri, 63101

Mine: Shoal Creek Mine, MSHA ID No. 01-02901, located in Tuscaloosa and Walker Counties, Alabama

Regulation Affected: 30 CFR 75.507-1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 30 CFR 75.507-1(a) as it pertains to use of battery-powered non-permissible surveying equipment in return air. Specifically, the petitioner requests to use battery-powered non-permissible equipment including, but not limited to portable battery operated mine transits, total station surveying equipment, distance meters, and data loggers.

The petitioner states that:

- (a) The petitioner utilizes the continuous mining machine and longwall method of mining.
- (b) Accurate surveying is critical to the safety of the miners at the Shoal Creek Mine.
- (c) To comply with the requirements of 30 CFR 75.372 and 30 CFR 75.1200, it is necessary to use the most practical and accurate surveying equipment.
- (d) Mechanical surveying equipment has been obsolete for a number of years and such equipment of acceptable quality is not commercially available. It is difficult, if not impossible, to service or repair mechanical surveying equipment.
- (e) Electronic surveying equipment is, at a minimum, eight to ten times more accurate than mechanical equipment.
- (f) Application of this standard would result in a diminution of safety to miners.
- (g) Underground mining by its nature, size, and mine plan complexity requires prompt and efficient completion of accurate and precise measurements.

The petitioner proposes the following alternative method:

- (a) The operator may use the Leica TS06 total station and similar low voltage battery-operated total stations and theodolites, distance meters, and data loggers if they have an Ingress Protection (IP) rating of 55 or greater in return air subject to the conditions of this petition.
- (b) The operator shall replace or retire from service any electronic surveying instrument acquired prior to December 31, 2004, within 1 year of this petition becoming final. Within 3 years of that date, the operator shall replace or retire from service any theodolite

acquired more than 5 years prior to the date this petition became final and any total station or other electronic surveying equipment acquired more than 10 years prior to the date this petition became final. After 5 years, the operator will maintain a cycle of purchasing new electronic surveying equipment whereby theodolites will be no older than 3 years from date of manufacture, and total stations and other electronic surveying equipment will be no older than 10 years from date of manufacture. All non-permissible electronic total stations and theodolites acquired under this retirement criteria shall have an IP rating of 66 or greater.

- (c) The operator is responsible for ensuring that all surveying contractors hired by the operator use electronic equipment in accordance with the requirements of this petition. The conditions of use apply to all non-permissible electronic surveying equipment used in return air regardless of whether the equipment is used by the operator or by an independent contractor.
- (d) The operator will maintain an electric surveying equipment logbook with the equipment, where mine record books are kept, or where surveying record books are kept. The logbook will contain the date of manufacture and/or purchase of each piece of electronic surveying equipment. The logbook shall be made available to MSHA upon request.
- (e) All non-permissible electronic surveying equipment to be used in return air shall be examined by the person who will operate the equipment prior to taking the equipment underground to ensure the equipment is being maintained in a safe operating condition. These examinations shall include:
 - 1. Check the instrument for any physical damage and the integrity of the case;
 - 2. Remove the battery and inspect for corrosion;
 - 3. Inspect the contact points to ensure a secure connection to the battery;
 - 4. Reinsert the battery and power up and shut down to ensure proper connections;and

5. Check the battery compartment cover or battery attachment to ensure it is securely fastened.
- (f) The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.153, and the examination results shall be recorded weekly in the equipment's logbook. Examination entries in the logbook may be expunged after 1 year.
 - (g) The operator is to ensure that all non-permissible electronic surveying equipment is serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's logbook and shall include a description of the work performed.
 - (h) Non-permissible surveying equipment that will be used in return air shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of this petition.
 - (i) Non-permissible surveying equipment shall not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more of methane is detected while the non-permissible surveying equipment is being used, the equipment shall be de-energized immediately and the non-permissible electronic equipment withdrawn out of return air. Prior to entering in return air, all requirements of 30 CFR 75.323 shall be complied with.
 - (j) As an additional safety check, prior to setting up and energizing non-permissible electronic surveying equipment in return air, the surveyor(s) shall conduct a visual examination of the immediate area for evidence that the areas appear to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or accumulated float coal dust is observed, the equipment may not be energized until sufficient rock dust has been applied and/or the accumulation of float coal dust has been cleaned-up. If non-permissible electronic surveying equipment is to be used in an area that is not rock dusted within 40 feet of a working face where a

continuous mining machine is used to extract coal, the area shall have sufficient rock dust applied prior to energizing the electronic surveying equipment.

- (k) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors shall provide visual and audible warnings when methane is detected at or above 1.0 percent.
- (l) Prior to energizing any non-permissible surveying equipment in return air, methane tests shall be made in accordance with 30 CFR 75.323(a).
- (m) All areas to be surveyed shall be pre-shift examined according to 30 CFR 75.360 prior to surveying. If the area was not pre-shift examined, a supplemental examination according to 30 CFR 75.361 shall be performed before any non-certified person enters the area. If the area has been examined according to 30 CFR 75.360 or 30 CFR 75.361, additional examination is not required.
- (n) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of non-permissible surveying equipment in or inby the last open crosscut. A second person in the surveying crew, if there are two people in the crew, shall also continuously monitor for methane. That person shall either be a qualified person as defined in 30 CFR 75.151, or be in the process of being trained to be a qualified person but have yet to make such tests for a period of 6 months as required by 30 CFR 75.150. Upon completion of the 6-month training period, the second person on the surveying crew shall become qualified in order to continue on the surveying crew. If the surveying crew consists of only one person, the surveyor shall monitor for methane with two separate devices.
- (o) Personnel engaged in the use of surveying equipment shall be properly trained to recognize the hazards and limitations associated with the use of surveying equipment in areas where methane could be present.

- (p) Batteries contained in the surveying equipment shall be changed out or charged out of return air. Replacement batteries for the surveying equipment shall be carried only in the compartment provided for a spare battery in the electronic equipment carrying case. Before each shift of surveying, all batteries for the surveying equipment shall be charged sufficiently that they are not expected to be replaced on that shift.
- (q) When using non-permissible electronic surveying equipment in return air, the surveyor shall confirm by measurement or by inquiry of the person in charge of the section that the air quantity on the section, on that shift, is at least the minimum quantity that is required by the mine's ventilation plan.
- (r) Non-permissible surveying equipment may be used when production is occurring subject to these conditions:
1. On a mechanized mining unit (MMU) where production is occurring, non-permissible electronic surveying equipment shall not be used downwind of the discharge point of any face ventilation controls, such as tubing (including controls such as "baloney skins") or curtains.
 2. Production may continue while non-permissible electronic surveying equipment is used if the surveying equipment is used in a separate split of air from where production is occurring.
 3. Non-permissible surveying equipment shall not be used in a split of air ventilating an MMU if any ventilation controls will be disrupted during such surveying. Disruption of ventilation controls means any change to the mine's ventilation system that causes the ventilation system not to function in accordance with the mine's approved ventilation plan.
 4. If, while surveying, a surveyor must disrupt ventilation, the surveyor shall

cease surveying and communicate to the section foreman that ventilation must be disrupted. Production shall stop while ventilation is disrupted. Ventilation controls shall be reestablished immediately after the disruption is no longer necessary.

Production can only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans and other applicable laws, standards, or regulations.

5. Any disruption in ventilation shall be recorded in the logbook required by this petition. The logbook shall include a description of the nature of the disruption, the location of the disruption, the date and time of the disruption, the date and time the surveyor communicated the disruption to the section foreman, the date and time production ceased, the date and time ventilation was reestablished, and the date and time production resumed.
- (s) All surveyors, section foremen, section crew members, and other personnel who will be involved with or affected by surveying operations shall receive training on the terms and conditions of the petition before using non-permissible electronic equipment in return air. A record of the training shall be kept with the other training records and provided to MSHA upon request.
- (t) Within 60 days after this petition becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in this petition. When training is conducted, an MSHA Certificate of Training (Form 5000- 23) shall be completed indicating surveyor training.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Petitioner: Peabody Southeast Mining LLC, 701 Market Street, St. Louis, Missouri, 63101

Mine: Shoal Creek Mine, MSHA ID No. 01-02901, located in Tuscaloosa and Walker Counties, Alabama

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.1002(a) as it pertains to use of battery-powered non-permissible surveying equipment on the longwall face or within 150 feet of pillar workings. Specifically, the petitioner requests to use battery-powered non-permissible equipment including, but not limited to portable battery operated mine transits, total station surveying equipment, distance meters, and data loggers.

The petitioner states that:

- (a) The petitioner utilizes the continuous mining machine and longwall method of mining.
- (b) Accurate surveying is critical to the safety of the miners at the Shoal Creek Mine.
- (c) To comply with the requirements of 30 CFR 75.372 and 30 CFR 75.1200, it is necessary to use the most practical and accurate surveying equipment. In order to ensure the safety of the miners in active mines and to protect miners in future mines which may mine in close proximity to these same active mines, it is necessary to determine the exact location and extent of the mine workings.
- (d) Mechanical surveying equipment has been obsolete for a number of years and such equipment of acceptable quality is not commercially available. It is difficult, if not impossible, to service or repair mechanical surveying equipment.
- (e) Electronic surveying equipment is, at a minimum, eight to ten times more accurate than mechanical equipment.
- (f) Application of this standard would result in a diminution of safety to miners.
- (g) Underground mining by its nature, size, and mine plan complexity requires prompt and efficient completion of accurate and precise measurements.

The petitioner proposes the following alternative method:

(a) The operator may use the Leica TS06 total station and similar low voltage battery-operated total stations and theodolites, distance meters, and data loggers if they have an Ingress Protection (IP) rating of 55 or greater within 150 feet of pillar workings subject to the conditions of this petition.

(b) The operator shall replace or retire from service any electronic surveying instrument acquired prior to December 31, 2004, within 1 year of this petition becoming final.

Within 3 years of that date, the operator shall replace or retire from service any theodolite acquired more than 5 years prior to the date this petition became final and any total station or other electronic surveying equipment acquired more than 10 years prior to the date this petition became final. After 5 years, the operator will maintain a cycle of purchasing new electronic surveying equipment whereby theodolites will be no older than 3 years from date of manufacture, and total stations and other electronic surveying equipment will be no older than 10 years from date of manufacture. All non-permissible electronic total stations and theodolites acquired under this retirement criteria shall have an IP rating of 66 or greater.

(c) The operator is responsible for ensuring that all surveying contractors hired by the operator use electronic equipment in accordance with the requirements of this petition.

The conditions of use apply to all non-permissible electronic surveying equipment within 150 feet of pillar workings regardless of whether the equipment is used by the operator or by an independent contractor.

(d) The operator will maintain an electric surveying equipment logbook with the equipment, where mine record books are kept, or where surveying record books are kept. The logbook will contain the date of manufacture and/or purchase of each piece of electronic surveying equipment. The logbook shall be made available to MSHA upon request.

- (e) All non-permissible electronic surveying equipment to be used within 150 feet of pillar workings shall be examined by the person who will operate the equipment prior to taking the equipment underground to ensure the equipment is being maintained in a safe operating condition. These examinations shall include:
1. Check the instrument for any physical damage and the integrity of the case;
 2. Remove the battery and inspect for corrosion;
 3. Inspect the contact points to ensure a secure connection to the battery;
 4. Reinsert the battery and power up and shut down to ensure proper connections;
- and
5. Check the battery compartment cover or battery attachment to ensure it is securely fastened.
- (f) The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.153, and the examination results shall be recorded weekly in the equipment's logbook. Examination entries in the logbook may be expunged after 1 year.
- (g) The operator is to ensure that all non-permissible electronic surveying equipment is serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's logbook and shall include a description of the work performed.
- (h) Non-permissible surveying equipment that will be used within 150 feet of pillar workings shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of this petition.
- (i) Non-permissible surveying equipment shall not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more of methane is detected while the non-permissible surveying equipment is being used, the equipment shall be de-energized immediately and the non-permissible electronic equipment withdrawn more

than 150 feet from pillar workings. Prior to entering within 150 feet of pillar workings, all requirements of 30 CFR 75.323 shall be complied with.

- (j) As an additional safety check, prior to setting up and energizing non-permissible electronic surveying equipment within 150 feet of pillar workings, the surveyor(s) shall conduct a visual examination of the immediate area for evidence that the areas appear to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or accumulated float coal dust is observed, the equipment may not be energized until sufficient rock dust has been applied and/or the accumulation of float coal dust has been cleaned-up. If non-permissible electronic surveying equipment is to be used in an area that is not rock dusted within 40 feet of a working face where a continuous mining machine is used to extract coal, the area shall have sufficient rock dust applied prior to energizing the electronic surveying equipment.
- (k) All hand-held methane detectors shall be MSHA-approved and will be maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors shall provide visual and audible warnings when methane is detected at or above 1.0 percent.
- (l) Prior to energizing any non-permissible surveying equipment within 150 feet of pillar workings, methane tests shall be made in accordance with 30 CFR 75.323(a).
- (m) All areas to be surveyed shall be pre-shift examined according to 30 CFR 75.360 prior to surveying. If the area was not pre-shift examined, a supplemental examination according to 30 CFR 75.361 shall be performed before any non-certified person enters the area. If the area has been examined according to 30 CFR 75.360 or 30 CFR 75.361, additional examination is not required.
- (n) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of non-permissible surveying equipment in or inby the last open crosscut. A second person in the surveying crew, if there are two people in

the crew, shall also continuously monitor for methane. That person shall either be a qualified person as defined in 30 CFR 75.151, or be in the process of being trained to be a qualified person but have yet to make such tests for a period of 6 months as required by 30 CFR 75.150. Upon completion of the 6-month training period, the second person on the surveying crew shall become qualified in order to continue on the surveying crew. If the surveying crew consists of only one person, the surveyor shall monitor for methane with two separate devices.

- (o) Personnel engaged in the use of surveying equipment shall be properly trained to recognize the hazards and limitations associated with the use of surveying equipment in areas where methane could be present.
- (p) Batteries contained in the surveying equipment shall be changed out or charged more than 150 feet from pillar workings. Replacement batteries for the surveying equipment shall be carried only in the compartment provided for a spare battery in the electronic equipment carrying case. Before each shift of surveying, all batteries for the surveying equipment shall be charged sufficiently that they are not expected to be replaced on that shift.
- (q) When using non-permissible electronic surveying equipment within 150 feet of the pillar workings, the surveyor shall confirm by measurement or by inquiry of the person in charge of the section that the air quantity on the section, on that shift, is at least the minimum quantity that is required by the mine's ventilation plan.
- (r) Non-permissible surveying equipment may be used when production is occurring subject to these conditions:
 - 1. On a mechanized mining unit (MMU) where production is occurring, non-permissible electronic surveying equipment shall not be used downwind of the discharge point of any face ventilation controls, such as tubing (including controls such as "baloney skins") or curtains.

2. Production may continue while non-permissible electronic surveying equipment is used if the surveying equipment is used in a separate split of air from where production is occurring.

3. Non-permissible surveying equipment shall not be used in a split of air ventilating an MMU if any ventilation controls will be disrupted during such surveying. Disruption of ventilation controls means any change to the mine's ventilation system that causes the ventilation system not to function in accordance with the mine's approved ventilation plan.

4. If, while surveying, a surveyor must disrupt ventilation, the surveyor shall cease surveying and communicate to the section foreman that ventilation must be disrupted. Production shall stop while ventilation is disrupted. Ventilation controls shall be reestablished immediately after the disruption is no longer necessary. Production can only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans and other applicable laws, standards, or regulations.

5. Any disruption in ventilation shall be recorded in the logbook required by this petition. The logbook shall include a description of the nature of the disruption, the location of the disruption, the date and time of the disruption, the date and time the surveyor communicated the disruption to the section foreman, the date and time production ceased, the date and time ventilation was reestablished, and the date and time production resumed.

(s) All surveyors, section foremen, section crew members, and other personnel who will be involved with or affected by surveying operations shall receive training on the terms and conditions of this petition before using non-permissible electronic equipment within 150

feet of the pillar workings. A record of the training shall be kept with the other training records and provided to MSHA upon request.

- (t) Within 60 days after this petition becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in this petition. When training is conducted, an MSHA Certificate of Training (Form 5000- 23) shall be completed indicating surveyor training.

Docket Number: M-2021-041-C

Petitioner: Bronco Utah Operations LLC, Hwy 10 South 550 West Consol Road,
P.O. Box 527, Emery, Utah 84522.

Mine: Emery Mine, MSHA ID No. 42-00079, located in Emery County, Utah.

Regulation Affected: 30 CFR 75.1909(b)(6), Nonpermissible diesel-powered equipment; design and performance requirements.

Modification Request: The petitioner requests a modification of the existing standard to permit the use of the Getman Roadbuilder RGD-1504, serial number 6946, (roadbuilder) a diesel-powered, six-wheeled road grader. It has dual brake systems on the four rear wheels that are designed to prevent loss of braking due to a single component failure; however, it is not equipped with brakes on the front wheels.

The petitioner proposes an alternative method of compliance, in lieu of the front wheel brakes, on the roadbuilder that will be used at the Emery Mine.

- (a) The roadbuilder will be modified to ensure that its maximum speed shall be limited to 10 miles per hour (mph) by:
 - 1. Permanently blocking out any gear ratio that allows speeds faster than 10 mph in both forward and reverse; and

2. Using transmission(s) and differential(s) geared in accordance with the equipment manufacturer's instructions that limit(s) the maximum speed to 10 mph.
- (b) The roadbuilder operators will be trained to recognize:
1. Appropriate levels of speed for different road conditions and slopes;
 2. When to lower the moldboard (grader blade) to provide additional stopping capability in emergencies; and
 3. The transmission gear-blocking device, or methods to block gears, and their proper application and requirements.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Acting Director,

Office of Standards, Regulations, and Variances.

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